

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

NEW YORK LIFE INSURANCE  
COMPANY,

*Plaintiff,*

v.

MASSIEL ORTIZ and JULIA KLAH,

*Defendants.*

C.A. No. 14-074/S

**PLAINTIFF NEW YORK LIFE INSURANCE COMPANY'S  
RULE 41(a)(2) MOTION TO DISMISS**

Plaintiff New York Life Insurance Company ("New York Life") now moves pursuant to F.R. Civ. P. 41(a)(2) to dismiss this Action with prejudice and without any award of fees or costs. New York Life files herewith a supporting memorandum of law.

Respectfully Submitted,  
New York Life Insurance Company,  
By its attorneys,

/s/ Brooks R. Magratten

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Dated: December 30, 2015

**CERTIFICATE OF SERVICE**

I certify that the within document was electronically filed with the clerk of the court on December 30, 2015, and that it is available for viewing and downloading from the Court's ECF system. Service by electronic means has been effectuated on all counsel of record.

/s/ Brooks R. Magratten

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**MEMORANDUM IN SUPPORT OF  
PLAINTIFF NEW YORK LIFE INSURANCE COMPANY'S  
RULE 41(a)(2) MOTION TO DISMISS**

Plaintiff New York Life Insurance Company ("New York Life") now moves pursuant to F.R. Civ. P. 41(a)(2) to dismiss this Action with prejudice and without any award of fees or costs.

New York Life commenced this interpleader action in order to resolve the payment of a disputed \$250,000 insurance Death Benefit. The defendant Ms. Ortiz responded to the Interpleader Complaint with multiple counterclaims. Only one survived summary judgment -- a counterclaim for misrepresentation. See Docket # 55, pp. 19-22. New York Life and Ms. Ortiz have since entered into a settlement agreement resolving the outstanding counterclaim and Ms. Ortiz's claim for additional post-mortem interest on the Death Benefit.

The defendant Ms. Klah responded to the Interpleader Complaint with a cross-claim against Ms. Ortiz for the Death Benefit. Ms. Klah, however, did not respond to Ms. Ortiz's motion to release the Death Benefit (then on deposit with the Registry of the Court) to her sole possession. See Docket #59. The Court on November 24, 2015, entered an order directing distribution of the Death Benefit to Ms. Ortiz alone. See Docket #65.

Consequently there remain no claims or issues to be resolved by this Court. New York Life has fully paid the Death Benefit. That benefit has been released to Ms. Ortiz. Ms. Klah has waived any claim to the Death Benefit. Any remaining claims between New York Life and Ms. Ortiz regarding the misrepresentation counterclaim or post-mortem interest have been resolved between them.

It is now appropriate for this Court to terminate this action and dismiss any surviving claims with prejudice and without any award of fees or costs. New York Life respectfully requests that this Court now enter an order directing the same.

Respectfully Submitted,  
New York Life Insurance Company,  
By its attorneys,

/s/ Brooks R. Magratten  
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